

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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GRUMA CORPORATION,

Plaintiff - Counterdefendant,

vs.

No. 97-822 WWD/RLP

GOLDEN EAGLE DISTRIBUTING, INC.,

Defendant - Counterclaimant.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court *sua sponte*. A five-day jury trial was scheduled in the above-captioned case for Monday, July 13, 1998. Less than an hour before the trial was to begin, and after a panel of prospective jurors had already been assembled, counsel notified me that the case had been settled the previous evening. Parties entered the fact of settlement on court record, noting that the terms of the agreement were confidential. District courts have discretion to “adopt local rules that are necessary to carry out the conduct of its business.” Frazier v. Heebe, 482 U.S. 641, 645 (1987) (citing 28 U.S.C. §§ 1654, 2071; Fed.R.Civ.P. 83). This Court has adopted a local rule which allows for jury costs, including mileage and *per diem* allowances, to be taxed equally to all parties when a jury trial is settled in advance of trial if notification is not made to the Clerk before 12:00 noon on the business day before the action is set for trial or if good cause is shown. D.N.M.LR-Civ. 54.4. The purpose of this rule is to deter future waste of jurors’ time caused by unnecessarily late notification of settlements. See Administrative Office of the U.S. Courts, Assessment of Jury Costs for Late Notification of

Settlement, Mar.1996 (recommending that courts implement a local rule to satisfy due process concerns and noting that principal value of assessing jury costs is “neither to punish wrongdoing nor to enrich the Treasury, but rather to deter future waste of jurors’ time caused by unnecessarily late notification of settlements”).

I am not aware of any reason why it would be inequitable to levy jury costs equally against both parties in this case, nor has either party suggested any.<sup>1</sup> The jury manager has assessed jury costs as follows:

Attendance fee:	\$680.00
Incidental Fee:	\$114.00
Travel (mileage):	\$529.48
Subsistence:	\$312.00
<b>Total:</b>	<b>\$1,635.48</b>

**WHEREFORE,**

**IT IS ORDERED** that each party shall pay the amount of \$817.74 into the registry of this Court by not later than August 14, 1998.

  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> Counsel were also advised the morning after settlement that both parties would bear equally any forthcoming jury costs.